

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 25, 2007

\_\_\_\_\_  
No. 06-41288  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ADRIAN ROMERO-HERNANDEZ

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CR-526-1  
\_\_\_\_\_

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Adrian Romero-Hernandez appeals his conviction and sentence following his plea of guilty to one count of unlawful reentry in violation of 8 U.S.C. § 1326(a), (b). Romero-Hernandez first contends that his 46-month sentence, which was within the properly calculated sentencing guidelines range, was unreasonable. According to Romero-Hernandez, this court's application of a presumption of reasonableness to within-guidelines sentences effectively renders

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the Guidelines mandatory in contravention of *United States v. Booker*, 543 U.S. 220 (2005). Romero-Hernandez's argument is foreclosed by circuit and Supreme Court precedent. See *United States v. Alonzo*, 435 F.3d 551, 553-54 (5th Cir. 2006); see also *Rita v. United States*, 127 S. Ct. 2456, 2463-68 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Romero-Hernandez also challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

The judgment of the district court is **AFFIRMED**.